

SUBCHAPTER V. MOTOR FUEL TAXES.

Article 36B.

Tax on Motor Carriers.

§ 105-449.37. Definitions; tax liability; application.

(a) Definitions. – The following definitions apply in this Article:

- (1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of January 1, 2017.
- (2) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor vehicle. The term does not include the United States, a state, or a political subdivision of a state.
- (3) Motor vehicle. – Defined in G.S. 20-4.01.
- (4) Operations. – The movement of a qualified motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.
- (5) Person. – Defined in G.S. 105-228.90.
- (6) Qualified motor vehicle. – Defined in the International Fuel Tax Agreement.
- (7) Secretary. – Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period.

(c) Application. – A motor carrier who operates a qualified motor vehicle in this State must submit an application, as provided in this Article, and obtain the appropriate license and decals for the vehicle. The Article applies to both an interstate motor carrier subject to the International Fuel Tax Agreement and to an intrastate motor carrier. (1955, c. 823, s. 1; 1973, c. 476, s. 193; 1983, c. 713, s. 55; 1989, c. 7, s. 1; 1991, c. 182, s. 2; c. 487, s. 2; 1991 (Reg. Sess., 1992), c. 913, s. 8; 1993, c. 354, s. 28; 1999-337, s. 36; 2000-140, s. 74; 2008-134, s. 16; 2010-95, s. 27; 2014-3, s. 9.5(b); 2017-39, s. 11.)

§ 105-449.38. Tax levied.

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is in addition to any other taxes imposed on motor carriers. (1955, c. 823, s. 2; 1969, c. 600, s. 22; 1981, c. 690, s. 3; 1985 (Reg. Sess., 1986), c. 982, s. 16; 1995, c. 390, s. 16; 2001-205, s. 2; 2008-134, s. 17.)

§ 105-449.39. Credit for payment of motor fuel tax.

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly return for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the tax rate in effect under G.S. 105-449.80 for the time period covered by the return. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the excess is refundable in accordance with G.S. 105-241.7. (1955, c. 823, s. 3; 1969, c. 600, s. 22; c. 1098; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1098; 1981, c. 690, s. 3; 1985 (Reg. Sess., 1986), c. 982, s. 17; 1987, c. 315; 1989, c. 692, s. 5.7; 1991,

c. 182, s. 3; c. 487, s. 3; 1998-146, s. 1; 1999-337, s. 37; 2005-435, s. 3; 2007-491, s. 40; 2010-95, s. 26(a); 2016-5, s. 4.10(a).)

§ 105-449.40. Secretary may require bond.

(a) Authority. – The Secretary may require a motor carrier to furnish a bond when any of the following occurs:

- (1) The motor carrier fails to file a return within the time required by this Article.
- (2) The motor carrier fails to pay a tax when due under this Article.
- (3) After auditing the motor carrier's records, the Secretary determines that a bond is needed to protect the State from loss in collecting the tax due under this Article.

(b) Amount. – A bond required of a motor carrier under this section may not be more than the larger of the following amounts:

- (1) Five hundred dollars (\$500.00).
- (2) Four times the motor carrier's average tax liability or refund for a reporting period.

A bond must be in the form required by the Secretary. (1955, c. 823, s. 4; 1967, c. 1110, s. 15; 1973, c. 476, s. 193; 1991, c. 487, s. 4; 2010-95, s. 26(b).)

§ 105-449.41: Repealed by Session Laws 2002-108, s. 2, effective January 1, 2003.

§ 105-449.42. Payment of tax.

The tax levied by this Article is due when a motor carrier files a quarterly return under G.S. 105-449.45. The amount of tax due is calculated on the amount of motor fuel or alternative fuel used by the motor carrier in its operations within this State during the quarter covered by the return. (1955, c. 823, s. 6; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1086, s. 2; 1983, c. 29, s. 2; 1991, c. 182, s. 4; 1999-337, s. 38; 2010-95, s. 26(c).)

§ 105-449.42A. Leased motor vehicles.

(a) Lessor in Leasing Business. – A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation is the motor carrier for a leased or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the Secretary written notice, by filing a return or otherwise, that the lessee is the motor carrier. In that circumstance, the lessee is the motor carrier for the leased or rented motor vehicle.

Before a lessee gives the Secretary written notice under this subsection that the lessee is the motor carrier, the lessee and lessor must make a written agreement for the lessee to be the motor carrier. Upon request of the Secretary, the lessee must give the Secretary a copy of the agreement.

(b) Independent Contractor. – The lessee of a motor vehicle that is leased from an independent contractor is the motor carrier for the leased motor vehicle unless one of the circumstances listed in this subsection applies. If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.

- (1) The motor vehicle is leased for fewer than 30 days.
- (2) The motor vehicle is leased for at least 30 days and the lessor gives the Secretary written notice, by filing a return or otherwise, that the lessor is the motor carrier. Before a lessor gives the Secretary written notice that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be

the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.

(c) **Liability.** – An independent contractor who leases a motor vehicle to another for fewer than 30 days is liable for compliance with this Article and the person to whom the motor vehicle is leased is not liable. Otherwise, both the lessor and lessee of a motor vehicle are jointly and severally liable for compliance with this Article. (1983, c. 29, s. 3; 1985 (Reg. Sess., 1986), c. 826, s. 11; 1991, c. 487, s. 5; 1991 (Reg. Sess., 1992), c. 913, s. 9; 2010-95, s. 26(d).)

§ 105-449.43. Application of tax proceeds.

Tax revenue collected under this Article and tax refunds or credits allowed under this Article shall be allocated among and charged to the funds and accounts listed in G.S. 105-449.125 in accordance with that section. (1955, c. 823, s. 7; 1981 (Reg. Sess., 1982), c. 1211, s. 3; 1989, c. 692, s. 1.16; 1995, c. 390, s. 17.)

§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.

(a) **Calculation.** – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified motor vehicles during that period.

(b) **Presumption.** – The Secretary must check returns filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the returns required by this Article. If the records indicate that a motor carrier operated in this State in a quarter and either did not file a return for that quarter or understated its mileage in this State on a return filed for that quarter by at least twenty-five percent (25%), the Secretary may assess the motor carrier for an amount based on the motor carrier's presumed operations. The motor carrier is presumed to have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified motor vehicles and to have fuel usage of four miles per gallon.

(c) **Vehicles.** – The number of qualified motor vehicles of a motor carrier that is licensed under this Article is the number of sets of decals issued to the carrier. The number of qualified motor vehicles of a carrier that is not licensed under this Article is the number of qualified motor vehicles licensed or registered by the motor carrier in the carrier's base state under the International Registration Plan. (1955, c. 823, s. 8; 1995, c. 390, s. 35; 1999-337, s. 39; 2000-173, s. 12; 2005-435, s. 4; 2008-134, s. 18; 2010-95, s. 26(e); 2011-145, s. 19.1(g); 2017-204, s. 4.4(a).)

§ 105-449.45. Returns of carriers.

(a) **Return.** – A motor carrier must report its operations to the Secretary on a quarterly basis unless subsection (b) of this section exempts the motor carrier from this requirement. A quarterly return covers a calendar quarter and is due by the last day in April, July, October, and January. A return must be filed in the form required by the Secretary.

(b) **Exemptions.** – A motor carrier is not required to file a quarterly return if any of the following applies:

- (1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.

- (2) The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for licensure with the Secretary.
- (c) Informational Returns. – A motor carrier must file with the Secretary any informational returns concerning its operations that the Secretary requires.
- (d) Penalties. – A motor carrier that fails to file a return under this section by the required date is subject to a penalty of fifty dollars (\$50.00).
- (e) Interest. – Interest on overpayments and underpayments of tax imposed on motor carriers under this Article is subject to the interest rate adopted in the International Fuel Tax Agreement. (1955, c. 823, s. 9; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1086, s. 2; 1981 (Reg. Sess., 1982), c. 1254, s. 2; 1989 (Reg. Sess., 1990), c. 1050, s. 1; 1991, c. 182, s. 5; 1995, c. 17, s. 13.1; 1998-212, s. 29A.14(q); 1999-337, s. 40; 2009-445, s. 31(a); 2010-95, s. 26(f); 2016-5, s. 4.8; 2017-204, s. 4.4(b).)

§ 105-449.46. Inspection of books and records.

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes. (1955, c. 823, s. 10; 1973, c. 476, s. 193; 2005-435, s. 5.)

§ 105-449.47. Licensure of vehicles.

(a) Requirement. – A motor carrier may not operate or cause to be operated in this State a qualified motor vehicle unless both the motor carrier and at least one qualified motor vehicle are licensed as provided in this subsection. This subsection applies to a motor carrier that operates a recreational vehicle that is used in connection with any business endeavor. A motor carrier that is subject to the International Fuel Tax Agreement must be licensed with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement must be licensed with the Secretary for purposes of the tax imposed by this Article.

(a1) License and Decal. – When the Secretary licenses a motor carrier, the Secretary must issue a license for the motor carrier and a set of decals for each qualified motor vehicle. A motor carrier must keep records of decals issued to it and must be able to account for all decals it receives from the Secretary. Licenses and decals issued by the Secretary are for a calendar year. All decals issued by the Secretary remain the property of the State. The Secretary may revoke a license or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its license in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display one decal on each side of the vehicle at all times. A decal must be affixed to the qualified motor vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a qualified motor vehicle that is licensed in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage. (1955, c. 823, s. 11; 1973, c. 746, s. 193; 1983, c. 713, s. 56; 1985 (Reg. Sess., 1986), c. 937, s. 20; 1989, c. 692, s. 6.2; 1991, c. 487, s. 6; 1995, c. 50, s. 5; c. 390, s. 18; 1999-337, s. 41; 2002-108, s. 3; 2004-170, s. 24; 2005-435, s. 6; 2008-134, s. 19; 2014-3, s. 9.5(c); 2017-204, s. 4.4(c).)

§ 105-449.47A. Denial of license application and decal issuance.

The Secretary may refuse to license and issue a decal to an applicant that does not meet the requirements set out in G.S. 105-449.69(b) or that has done any of the following:

- (1) Had a license issued under Chapter 105 or Chapter 119 of the General Statutes revoked by the Secretary.
- (2) Had a license issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, revoked.
- (3) Been convicted of fraud or misrepresentation.
- (4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if licensed and issued a decal.
- (5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
- (6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes. (2005-435, s. 7; 2008-134, s. 20; 2009-445, s. 32; 2010-95, s. 28; 2017-204, s. 4.4(d).)

§ 105-449.48: Repealed by Session Laws 2006-162, s. 12(c), effective July 24, 2006.

§ 105-449.49. Temporary permits.

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars (\$50.00), a permitting service may obtain a temporary permit authorizing a motor carrier to operate a vehicle in the State for three days without licensing the vehicle in accordance with G.S. 105-449.47. The permitting service may sell the temporary permit to a motor carrier. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Repealed by Session Laws 2016-5, s. 4.6, effective May 11, 2016. (1955, c. 823, s. 13; 1973, c. 476, s. 193; 1979, c. 11; 1981 (Reg. Sess., 1982), c. 1254, s. 1; 1983, c. 713, s. 58; 1991, c. 182, s. 6; c. 487, s. 7; 1991 (Reg. Sess., 1992), c. 913, s. 10; 2003-349, s. 10.1; 2006-162, s. 12(d); 2016-5, s. 4.6; 2017-204, s. 4.4(e).)

§ 105-449.50. Repealed by Session Laws 2008-134, s. 21.

§ 105-449.51. Violations declared to be misdemeanors.

A person who operates or causes to be operated on a highway in this State a qualified motor vehicle that does not carry a license as required by this Article, does not properly display a decal as required by this Article, or is not licensed in accordance with this Article commits a Class 3 misdemeanor and is punishable by a fine of two hundred dollars (\$200.00). Each day's operation in violation of this section constitutes a separate offense. (1955, c. 823, s. 15; 1973, c. 476, s. 193; 1983, c. 713, s. 59; 1993, c. 539, s. 734; 1994, Ex. Sess., c. 24, s. 14(c); 2005-435, s. 8; 2008-134, s. 22; 2017-204, s. 4.4(f).)

§ 105-449.52. Civil penalties applicable to motor carriers.

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

- (1) Operates in this State or causes to be operated in this State a qualified motor vehicle that either fails to carry the license required by this Article or fails to display a decal in accordance with this Article. The amount of the penalty is one hundred dollars (\$100.00).
- (2) Is unable to account for a decal the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars (\$100.00) for each decal for which the carrier is unable to account.
- (3) Displays a decal on a qualified motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars (\$1,000) for each decal unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the decal and the motor carrier displaying the unlawfully obtained decal are jointly and severally liable for the penalty under this subdivision.

(a1) **Payment.** – A penalty imposed under this section is payable to the agency that assessed the penalty. When a qualified motor vehicle is found to be operating without a license or a decal or with a decal the Secretary did not issue for the vehicle, the qualified motor vehicle may not be driven for a purpose other than to park it until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operating it will not jeopardize collection of the penalty.

(b) **Penalty Reduction.** – The Secretary may reduce or waive the penalty as provided under G.S. 105-449.119. (1955, c. 823, s. 16; 1957, c. 948; 1973, c. 476, s. 193; 1975, c. 716, s. 5; 1981, c. 690, s. 18; 1983, c. 713, s. 60; 1991, c. 42, s. 14; 1991 (Reg. Sess., 1992), c. 913, s. 11; 1998-146, s. 2; 1999-337, s. 43; 2002-108, s. 4; 2004-170, s. 25; 2007-527, s. 16(a); 2008-134, ss. 8, 23; 2014-3, s. 9.8(a); 2017-204, s. 4.4(g).)

§ 105-449.53. Repealed by Session Laws 1963, c. 1169, s. 6.

§ 105-449.54. Commissioner of Motor Vehicles made process agent of nonresident motor carriers.

By operating a motor vehicle on the highways of this State, a nonresident motor carrier consents to the appointment of the Commissioner of Motor Vehicles as its attorney in fact and process agent for all summonses or other lawful process or notice in any action, assessment, or other proceeding under this Chapter. (1955, c. 823, s. 18; 2004-170, s. 26.)

§§ 105-449.55 through 105-449.56: Repealed by Session Laws 1991, c. 42, s. 17.

§ 105-449.57. Cooperative agreements between jurisdictions.

(a) **Authority.** – The Secretary may enter into cooperative agreements with other jurisdictions for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary or the Secretary's designee.

(b) **Content.** – An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting,

determining methods for collecting and forwarding of motor carrier taxes and penalties to another jurisdiction, and any other provisions that will facilitate the administration of the agreement.

(c) Disclosure. – In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another jurisdiction any information in the Department's possession relative to the administration and collection of a tax imposed on the use of motor fuel or alternative fuel by any motor carrier. The Secretary may disclose to officials of another jurisdiction the location of offices, motor vehicles, and other real and personal property of motor carriers.

(d) Audits. – An agreement may provide for each jurisdiction to audit the records of motor carriers based in the jurisdiction to determine if the taxes due each jurisdiction are properly reported and paid. Each jurisdiction must forward the findings of the audits performed on motor carriers based in the jurisdiction to each jurisdiction in which the carrier has taxable use of motor fuel or alternative fuel. For motor carriers not based in this State, the Secretary may utilize the audit findings received from another jurisdiction as the basis upon which to propose assessments of taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest must be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

(e) Restriction. – The Secretary or the Secretary's designee may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes. Any provision to the contrary is void. (1989, c. 667, s. 1; 1993, c. 485, s. 36; 1995 (Reg. Sess., 1996), c. 647, s. 50; 1999-337, s. 42; 2016-5, ss. 4.5(b), 4.7(a), (b).)

§ 105-449.58. Reserved for future codification purposes.

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